

CPO

1 to. I think it's unquestionably  
 2 clear that we have gone over and  
 3 beyond our requirements under  
 4 30(b)(6) in this whole process.

5 MR. BROWN: Okay. Can I ask  
 6 my next question?

7 MS. HARDING: Yes, you may.

8 BY MR. BROWN:

9 Q. Mr. Hughes, let's go to  
 10 other schedules for the moment. Let's  
 11 take a look at the second schedule.

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12 MS. HARDING: Again,  
 13 Mr. Hughes wasn't even designated  
 14 with respect to this schedule or  
 15 this exhibit, but go ahead. I am  
 16 happy to let him answer the  
 17 question.

18 MR. BROWN: We was  
 19 designated as a person that would  
 20 be produced on insurance issues.  
 21 There are nine topics on that  
 22 chart that had his name next to  
 23 it. We don't need to quarrel  
 24 about it. If he doesn't know the

1 Q. All right. Let's go back to  
 2 Schedule 1 and specifically page 7 of  
 3 Schedule 1.

4 A. Okay.

5 Q. And you heard me when I  
 6 introduced myself that one of my clients  
 7 is GEICO. You will see in the middle of  
 8 the page that there are three policies  
 9 for GEICO listed on page 7.

10 Do you see those?

11 A. Yes.

12 Q. Okay. Did Grace to your  
 13 knowledge have any settlement with GEICO?

14 A. Not to my knowledge.

15 Q. Okay. Let's go a little bit  
 16 further on to page 16. Another one of  
 17 the companies that I indicated I  
 18 represent is Republic, and you will see  
 19 toward the top of that page there are two  
 20 policies listed for Republic.

21 To your knowledge, did Grace  
 22 have any settlements with Republic  
 23 Insurance Company?

24 A. Again, I am familiar with

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1 answer, fine.

2 BY MR. BROWN:

3 Q. Mr. Hughes, my question with  
 4 respect to Schedule 2 of Hughes-12 is, do  
 5 you understand what the schedule  
 6 reflects?

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7 A. Yes.

8 Q. What is that?

9 A. It's a list of the insurance  
 10 settlement agreements -- settlement  
 11 agreements which resolved coverage  
 12 disputes with liability insurers that  
 13 provided Grace with insurance coverage  
 14 for asbestos-related personal injury and  
 15 property damage claims and the dates of  
 16 those agreements.

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1 and maintain a list in my office because  
 2 of my involvement in terms of what -- I  
 3 don't know and don't recall specifically  
 4 an agreement with Republic.

5 But the other issue, of  
 6 course, when you come with insurance  
 7 companies is kind of the changing  
 8 landscape of who they are. But I don't  
 9 specifically recall Republic Insurance.  
 10 I think there are over 60 or 70  
 11 agreements, settlement agreements with  
 12 different kinds.

13 Q. Would you agree with me that  
 14 Republic Insurance Company does not  
 15 appear on either Schedule 3 -- excuse me  
 16 -- either 2 or 3?

17 A. No.

18 Q. Does that help refresh your  
 19 recollection as to whether Grace had --

20 MR. LEWIS: That sounds like  
 21 a double negative. I don't know  
 22 that the record is clear on that.

23 MR. SCHIAVONI:

24 No, he doesn't agree or not?

<p>1 MR. LEWIS: Can you read it 2 back? I might have muddled it. 3 (The reporter read from the 4 record as requested.) 5 THE WITNESS: I agree that 6 it's correct.</p> <p>7 BY MR. BROWN: 8 Q. We were talking about 9 Republic. Why don't we try to fix that. 10 I am correct, am I right 11 knot that Republic Insurance Company does 12 not appear on Schedule 2 or 3? 13 A. Yes, you are correct. It 14 does not appear on Schedule 2 or 3. 15 Q. Does that refresh your 16 recollection as to whether Grace had a 17 settlement agreement with Republic? 18 A. I have no recollection that 19 it does, and since it doesn't appear on 2 20 and 3 and my understanding is 2 and 3 are 21 accurate, then I would say my 22 understanding would be no, that there is 23 no settlement agreement with Republic. 24 Q. Okay. You indicated at the</p>	<p>Page 314</p> <p>1 question, go ahead. 2 THE WITNESS: Well, to 3 provide insurance coverage and to 4 provide indemnity payments when 5 the underlying policies under the 6 terms of the insurance contract. 7 If a loss covered within the scope 8 of the coverage provided to the 9 insured and that the underlying 10 policies have been exhausted, that 11 it would trigger an obligation on 12 the part of the excess insurer to 13 pay the claim, again, in a manner 14 consistent with the insurance 15 policy.</p> <p>16 BY MR. BROWN: 17 Q. Okay. And just following up 18 on that latter phrase at the end of your 19 answer, do you understand generally -- 20 and I understand that it may be different 21 from policy to policy. But do you 22 understand generally that the insurer has 23 a duty to cooperate with the excess 24 insurer?</p>
<p>1 outset that you were generally familiar 2 with Grace's insurance program. 3 Are you generally familiar 4 with the rights and duties of the 5 insured, on the one hand, and the 6 insurer, on the other, under an excess 7 policy?</p> <p>8 MS. HARDING: Object to 9 form. 10 Go ahead. 11 THE WITNESS: Yes, I am 12 generally familiar. 13 BY MR. BROWN: 14 Q. Okay. Can you describe your 15 familiarity in terms of -- what do you 16 understand to be the insurer's, the 17 excess insurer's rights under an excess 18 policy?</p> <p>19 MS. HARDING: I am just 20 going to object to form and to the 21 extent it's overly broad and 22 doesn't refer to a specific 23 policy. 24 But if you can answer the</p>	<p>Page 315</p> <p>1 MS. HARDING: Object to 2 form. Again, same objection. 3 THE WITNESS: I know 4 generally that in terms of 5 insurance policies, an insured has 6 a duty to cooperate.</p> <p>7 BY MR. BROWN: 8 Q. And the insured has a duty 9 to give notice of claims; you are 10 familiar with that as well? 11 A. Yes. 12 Q. And are you generally 13 familiar at that the excess layer, the 14 insure has a right to associate in the 15 defense of claims?</p> <p>16 MS. HARDING: Object to 17 form. 18 THE WITNESS: To associate 19 in defense of claims?</p> <p>20 BY MR. BROWN: 21 Q. Yes. 22 A. Yes, although I think that, 23 again, that's something that you alluded 24 to earlier that I would think varied from</p>

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1 policy to policy in specific relation.  
 2 Q. Okay. To your knowledge,  
 3 does Grace have any agreement with GEICO  
 4 pursuant to which GEICO gave up any of  
 5 its rights or ceded any of its rights  
 6 under the policies that appear page 7 of  
 7 Schedule 1 of Hughes-12?

8 MS. HARDING: Object to  
 9 form.

10 THE WITNESS: Not to my  
 11 knowledge.

12 BY MR. BROWN:

13 Q. And would your answer be the  
 14 same with respect to Republic?

15 A. Yes.

16 Q. To your knowledge, has GEICO  
 17 or Republic given up any of its claims  
 18 handling rights pursuant to any agreement  
 19 with Grace?

20 MS. HARDING: Just objection  
 21 to form. That assumes facts not  
 22 in evidence.

23 But go ahead.

24 THE WITNESS: Not to my

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1 knowledge.

2 BY MR. BROWN:

3 Q. Okay. You indicated earlier  
 4 that your title is senior litigation  
 5 counsel; is that correct?

6 A. Yes.

7 Q. And I guess at the time of  
 8 the petition you reported to Mr. Siegel;  
 9 is that correct?

10 A. Yes.

11 Q. And he was the general  
 12 counsel at the time?

13 A. Yes.

14 Q. How would you describe your  
 15 responsibilities with respect to asbestos  
 16 personal injury claims pre-petition?

17 MS. HARDING: I am just  
 18 going to object to the form to the  
 19 extent it's overly broad, requires  
 20 an overly broad interpretation.

21 But to the extent you can  
 22 answer it --

23 MR. LEWIS: I am not.

24 MR. BROWN: I am not asking

1 for an exhaustive list.

2 MS. HARDING: Right.

3 THE WITNESS: As I said  
 4 earlier, I was responsible for the  
 5 day-to-day management and  
 6 resolution of the claims  
 7 internally. And as such, I worked  
 8 with the outside law firms in  
 9 litigating the cases and settling  
 10 cases, and internally I worked  
 11 with different groups within the  
 12 company to appropriately record  
 13 and manage the provision of  
 14 services from outside counsel  
 15 firms, payment of the firms,  
 16 payment of the settlements.

17 BY MR. BROWN:

18 Q. Okay. What was the period  
 19 of time over which you had that role?

20 A. I would say from 1989  
 21 through 19 -- excuse me -- through 2001,  
 22 April of 2001.

23 Q. Okay. And that was the  
 24 petition date?

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1 A. Yes.

2 Q. Is it fair to say that you  
 3 are the person at Grace most  
 4 knowledgeable with respect to the manner  
 5 in which asbestos personal injury claims  
 6 were handled pre-petition?

7 A. Yes.

8 Q. Did Grace have national  
 9 coordinating counsel with respect to  
 10 asbestos bodily injury claims?

11 A. It depends on how you define  
 12 national coordinating counsel. We had a  
 13 national -- Casner & Edwards in Boston  
 14 handled all our documents, and Bob  
 15 Murphy, a partner there, would  
 16 participate in trials and work with  
 17 outside counsel. And there were some  
 18 other lawyers around the country who I  
 19 would call upon to do that as well.

20 Q. Okay. I gather from your  
 21 answer that he didn't have the official  
 22 title national coordinating counsel?

23 A. Well, also, I think after  
 24 1989, the outside counsel didn't report

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1 to him. I view national coordinating  
 2 counsel kind of strictly as I understand  
 3 it is when the outside counsel in a  
 4 particular jurisdiction report on a  
 5 day-to-day basis to the firm, and then  
 6 the national counsel, in turn, reports to  
 7 the client and the corporation.

8 And we had it set up a  
 9 little differently, that after 1989 --  
 10 again, before that, I viewed Bob Murphy  
 11 as serving what I would call traditional  
 12 national coordinating counsel and that  
 13 the outside firms reported to him. But  
 14 we kind of reversed that.

15 Q. Okay. If I understood your  
 16 answer then, is it fair to say from 1989  
 17 to 2001, that effectively you acted as  
 18 the national coordinating counsel?

19 A. Yeah, with the assistance of  
 20 Casner & Edwards and Bob Murphy and  
 21 others.

22 Q. Mr. Finke, I believe,  
 23 testified that in addition to Casner &  
 24 Edwards Grace had approximately 25 other

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1 But, again, there were  
 2 communications on the status of cases on  
 3 what was going on, on working with Grace  
 4 witnesses, expert, fact, was done through  
 5 me. And I made the arrangements. The  
 6 only exception to that was, again, with  
 7 Casner & Edwards that the process worked  
 8 that discovery responses, Grace's  
 9 discovery responses in the underlying  
 10 cases, those would be -- I would be  
 11 copied on them. But they would be  
 12 directly sent to Casner & Edwards and Bob  
 13 Murphy or the associates at that firm  
 14 that were actually prepared and would  
 15 work directly with the local counsel in  
 16 preparing responses.

17 Q. Okay. Is it fair to say  
 18 that you and the local firms, the 50 or  
 19 so firms that you testified that defended  
 20 Grace, and the Casner & Edwards firm  
 21 acted as a group in the defense of  
 22 asbestos claims asserted against Grace?

23 A. Yes.

24 MS. HARDING: Object to

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1 firms around the country that were  
 2 defending Grace in various jurisdictions  
 3 against asbestos PI claims.

4 Does that sound about right  
 5 to you?

6 A. It sounds a little low,  
 7 actually, since there are 50 different  
 8 states and then I think we had cases in  
 9 virtually every state and in some  
 10 jurisdictions, California, Texas, would  
 11 have more than one counsel.

12 Q. So what would be your  
 13 estimate or number?

14 A. My estimate would be 50.

15 Q. Now, what was your  
 16 interaction with each of those 50 or so  
 17 law firms in terms of defending against  
 18 asbestos claims?

19 A. They would report on a  
 20 regular basis in terms of developments,  
 21 they would -- again, obviously when you  
 22 talk about 50 firms, a lot of the level  
 23 of activity of some of the firms was lot  
 24 less than others.

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1 form.

2 Go ahead.

3 BY MR. BROWN:

4 Q. Can you describe for me the  
 5 types of things that that group did in  
 6 defending Grace against asbestos claims?

7 A. Virtually everything an  
 8 attorney would do representing the  
 9 company in asbestos or any kind of toxic  
 10 tort case. You know, they responded to  
 11 complaints, they responded to discovery,  
 12 they appeared on Grace's behalf at  
 13 depositions, they tried cases, they  
 14 negotiated settlements, they participated  
 15 in defense groups.

16 Q. Let me just give you an  
 17 example. A complaint comes in the door.  
 18 Was it the responsibility of whatever  
 19 counsel was handling that particular case  
 20 to look at the complaint, to see if the  
 21 complaint had procedural defects or the  
 22 statute of limitations had expired, to do  
 23 those sort of things?

24 A. Yeah. The complaints came

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1 and generally were served through us. I  
 2 know some people had systems where local  
 3 counsel accepted service. We did not do  
 4 that.

5 We had a system where when  
 6 the complaint was entered into the case  
 7 management system, it automatically sent  
 8 the complaint to the firm that had been  
 9 designated as local counsel in that  
 10 jurisdiction, and that local counsel,  
 11 once they received the complaint, review  
 12 the complaint and file an appropriate  
 13 response and then handle the case.

14 Q. And an appropriate response  
 15 might be a motion to dismiss? It could  
 16 be an Answer?

17 A. It could be an Answer; it  
 18 could be a motion to dismiss. You have  
 19 to keep in mind we don't have to get --  
 20 we have to keep in mind the asbestos  
 21 personal injuries cases in a lot of  
 22 jurisdictions, a lot of this was kind of  
 23 institutionalized through case management  
 24 orders that in some cases, all you had to

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1 would come in in a box load and you would  
 2 look through them and see if they made  
 3 the statute of limitations, whether they  
 4 had other procedural defects that might  
 5 have been peculiar to the given  
 6 jurisdiction, and, if appropriate, file  
 7 motions, file preliminary objections.  
 8 It's called different things in different  
 9 jurisdictions.

10 Were your local counsel  
 11 doing that sort of thing pre-petition?

12 A. Yes.

13 MS. HARDING: Object to  
 14 form. Are you asking him  
 15 generally did that happen or did  
 16 it happen with all cases?

17 MR. BROWN: I am trying to  
 18 get a sense of how the cases were  
 19 handled pre-petition, whether  
 20 motions were filed if it was  
 21 appropriate.

22 MS. HARDING: Right. But  
 23 they have hundreds of thousands of  
 24 cases. Are you just saying did

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1 do was enter an appearance. There  
 2 wasn't -- some of the analysis because of  
 3 the repetitious nature of it, that  
 4 typically if I was involved in a lawsuit  
 5 today as an in-house lawyer and sent it  
 6 to somebody, we might sit down and talk  
 7 about what the Answer is and what the  
 8 allegations are.

9 In an asbestos case, again,  
 10 because there were thousands of them --  
 11 in some cases there were actually what I  
 12 would call form Answers and form  
 13 Complaints and so on. So it was highly  
 14 managed by a case management order and  
 15 the court.

16 Q. Let me give you an example  
 17 from my own experience and ask you  
 18 whether Grace did these sort of things.

19 I used to do some of the  
 20 that work when I was a junior associate,  
 21 and one of the things I was charged with  
 22 was reviewing complaints and finding out  
 23 if there were procedural defects with  
 24 complaints. And sometimes the complaints

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1 that ever happen or are you asking  
 2 if that happened in every case?

3 MR. BROWN: No.

4 MS. HARDING: I am asking  
 5 you because it's not clear.

6 MR. BROWN: I am asking him  
 7 whether in the course of  
 8 evaluating a case that came in the  
 9 door, whether it was the  
 10 responsibility of counsel to look  
 11 at it for procedural defects and,  
 12 if appropriate, file a motion and  
 13 if appropriate, file an answer.

14 THE WITNESS: Yes.

15 BY MR. BROWN:

16 Q. You also mentioned  
 17 discovery, and I think you said the  
 18 Casner & Edwards firm, if I understood  
 19 you correctly, handled Grace's responses  
 20 to discovery; is that correct?

21 A. Asbestos personal injury  
 22 cases, yes.

23 Q. Okay. How was the discovery  
 24 that Grace took of claimants handled by

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1 you, by Casner & Edwards, and the other  
2 local firms that were defending cases?

3 MS. HARDING: And I am just  
4 going to -- I think you have  
5 already taken this into  
6 consideration. I will object. To  
7 the extent it calls for  
8 attorney-client privilege or work  
9 product, do not answer. But I  
10 don't think you are asking him for  
11 that. So I just want to make it  
12 clear.

13 THE WITNESS: With a couple  
14 of exceptions, which were  
15 important but were relatively  
16 infrequent, it would be handled by  
17 the local counsel. The exceptions  
18 are that if we received the  
19 deposition notice of a Grace or  
20 fact witness of a Grace former  
21 employee or an expert, kind of a  
22 national asbestos personal injury  
23 expert, and we had specific  
24 expertise and the fact witness

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1 the answer to the question is yes,  
2 although in many jurisdictions and  
3 certainly in the major jurisdictions,  
4 there tended to be a joint medical  
5 defense group. And one firm or one  
6 particular -- lawyers would often handle  
7 some of the medical records issues and  
8 the medical testimony issues in the case  
9 on behalf of all of the defendants.

10 Q. Okay. And did your local  
11 counsel look for other causes to a  
12 particular claimant's injury? For  
13 example, if they were a long-term smoker,  
14 would that be an issue that Grace pursued  
15 in discovery?

16 A. Sure.

17 Q. What other sort of defenses  
18 in that regard would Grace inquire into?

19 A. Smoking, alternative  
20 exposures, history, you know, whether the  
21 person -- where the person worked and  
22 exposure to other people's products,  
23 questionable diagnoses in a meso case.  
24 We would have it sent out to somebody

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1 case would generally be Bob  
2 Murphy.

3 But we might have somebody  
4 from an outside firm that wasn't  
5 specifically assigned a  
6 jurisdiction to handle that. But  
7 in terms of coworker depositions,  
8 plaintiff depositions, developing  
9 discovery with respect to a  
10 particular job site, that would be  
11 handled by the local counsel.

12 BY MR. BROWN:

13 Q. Okay. Do I gather from your  
14 answer that local counsel, for example,  
15 in written discovery depositions would  
16 inquire into exposure to Grace products?

17 A. Yes.

18 Q. Okay. And product ID  
19 sometimes called?

20 A. Yes.

21 Q. And how about medical  
22 issues?

23 A. Well, as you may know, if  
24 you had some prior involvement with it,

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1 else to review the pathology. All the  
2 kinds of things that a defense lawyer in  
3 an asbestos case and just more broadly in  
4 a personal injury case would do.

5 They were given relatively  
6 broad, they being the local counsel,  
7 authority to act on Grace's behalf in  
8 defending the cases.

9 Q. Were they told to zealously  
10 defend Grace?

11 MS. HARDING: Well, object  
12 to the extent it calls for  
13 attorney-client communications.

14 THE WITNESS: I certainly  
15 hope I wouldn't have to tell  
16 people to do that since they are  
17 members of the bar and they have  
18 that ethical obligation.

19 But, yeah, they were  
20 certainly told -- there was a  
21 management process, and there were  
22 guidelines provided to them to  
23 some degree of what they wanted to  
24 do and what they shouldn't do.

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1 And there were things that I did  
 2 in terms of resolving cases that  
 3 would have taken them out.

4 But, yeah, I think they  
 5 understood that they were to  
 6 zealously defend it, and we had  
 7 some very good lawyers  
 8 representing us.

9 BY MR. BROWN:

10 Q. And was it your  
 11 responsibility internally to make certain  
 12 that that happened?

13 A. Yes.

14 Q. Now, did you work with any  
 15 asbestos plaintiffs lawyers? When I say  
 16 work with them, did you have interaction  
 17 with any of the big guns in the asbestos  
 18 bar?

19 A. Personally?

20 Q. Yes.

21 A. Yes.

22 Q. Who?

23 A. And I was alluding to this  
 24 earlier. Most of them, certainly in

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1 A. And I dealt with most of  
 2 them, at least at that time. It's been  
 3 eight years. I am sure it's a new group.  
 4 But at that point, many of them.

5 Q. I am not so sure.

6 Give me some examples.

7 A. You can go down  
 8 geographically. I know Perry Weitz, and  
 9 I have met with Perry Weitz. I know Joe  
 10 Rice. I know Greitzer & Locks. I have  
 11 dealt with Dino Vovet (phonetic), Peter  
 12 Angelos' firm many times. I used to know  
 13 Mike Kelly who has passed away. I know  
 14 Jim Ferraro. I know Irving Gonzalez, who  
 15 is in jail. I know -- who else? I have  
 16 dealt with -- I know Russell Budd and  
 17 Fred Baron. I have dealt with Peter  
 18 Krauss.

19 Q. You mentioned Mr. Cooney  
 20 earlier, I think.

21 A. Cooney, I know John Cooney.  
 22 I have met with him.

23 Q. Any others that you can  
 24 think of?

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1 A. There is probably others I  
 2 have met with, and I have missed some.  
 3 But there are some that I haven't met,  
 4 either because we didn't get into those  
 5 kinds of discussions or I was comfortable  
 6 with the ability of our local counsel to  
 7 negotiate cases and just the need for me  
 8 to meet with them didn't arise.

9 Particularly in California, the  
 10 traditional California firms, I don't  
 11 recall meeting working with Steve Casner,  
 12 and there are others out there.

13 Q. All right. Again, we are  
 14 still focused on the pre-petition time  
 15 frame.

16 Was Grace required to obtain  
 17 the consents of any of the members of the  
 18 plaintiffs bar with respect to the manner  
 19 in which Grace defended itself against  
 20 asbestos claims, any of the gentlemen you  
 21 just mentioned?

22 MS. HARDING: Object to  
 23 form.

24 THE WITNESS: You will have

1 terms of the inventory settlement  
 2 agreements and when we got into the  
 3 process of settling larger groups, local  
 4 defense counsel on the asbestos personal  
 5 injury cases, when it's comes to  
 6 resolving larger groups, have kind of  
 7 conflicting motivations.

8 On one hand, they want to do  
 9 their client a good service, and they  
 10 want to get rid of cases as cheaply as  
 11 possible, but on the other hand,  
 12 inventory settlements where we might buy  
 13 up or settle the docket for six months,  
 14 eight months, even two, three months,  
 15 settlements like that cause the defense  
 16 lawyers to lose billable hours in terms  
 17 of their own businesses, lawyers.

18 So when we started getting  
 19 into those negotiations in the larger  
 20 groups, I would handle them personally.  
 21 And it was generally in that capacity  
 22 that I dealt directly with plaintiffs'  
 23 lawyers.

24 Q. Okay.

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<p>1 to repeat that.      2 MR. LEWIS: We will have it      3 read back.      4 (The reporter read from the      5 record as requested.)      6 MS. HARDING: I am sorry.      7 MR. LEWIS: I am sorry. I      8 don't understand the question.      9 MR. BROWN: You are not      10 answering it.      11 MR. LEWIS: I just object to      12 the question as unintelligible as      13 stated.      14 MR. BROWN: Do you      15 understand the question?      16 THE WITNESS: I think so.      17 I think the answer is no,      18 although they would occasionally      19 volunteer information to tell      20 Grace how to defend cases.      21 BY MR. BROWN:      22 Q. And you didn't seek their      23 consent?      24 A. No.</p>	<p>PP Obj: R</p> <p>Page 338</p>	<p>1 Q. How about the exposure      2 criteria? Did that dictate that to      3 Grace?      4 A. No, they didn't.      5 Q. Did they dictate to Grace      6 the types of proofs that Grace would      7 accept for a settlement?      8 A. Again, it was a negotiation.      9 But, no, they didn't dictate it.      10 Q. Did they decide what type of      11 release Grace would accept in exchange      12 for a settlement?      13 A. No. It's a negotiation.      14 Q. All right. Again,      15 pre-petition, your title was senior      16 litigation counsel?      17 A. Yes.      18 Q. Okay. Did the plaintiff's      19 attorney have the power to remove you if      20 they didn't like the way you were      21 handling the defense of Grace claims?      22 MS. HARDING: Objection.      23 It's relevance at this point.      24 Go ahead.</p>	<p>PP Obj: R</p> <p>Page 340</p>
<p>1 Q. Did the plaintiffs bar      2 participate in the internal      3 decision-making regarding the manner in      4 which Grace defended asbestos claims      5 pre-petition?      6 A. No.      7 Q. Did Grace leave it up to the      8 plaintiffs' attorneys to decide how much      9 Grace would pay for a claim?      10 A. No.      11 Q. Did Grace consult with the      12 plaintiffs bar with respect to the manner      13 in which Grace and its outside counsel      14 defended claims?      15 A. No.      16 Q. Did the plaintiffs'      17 attorneys decide what medical criteria      18 were satisfactory for a settlement with      19 Grace?      20 A. It was a product of      21 negotiation if there were inventory      22 settlements that had specific objective      23 medical criteria. They didn't dictate to      24 Grace what the medical criteria was.</p>	<p>PP Obj: R</p> <p>Page 339</p>	<p>1 THE WITNESS: No, they      2 didn't.      3 BY MR. BROWN:      4 Q. Did they control how much      5 you were paid for your job at Grace?      6 A. No.      7 MR. BROWN: I might be      8 finished. Let me have a couple of      9 minutes.      10 (There was a break from 4:11      11 p.m. to 4:16 p.m.)      12 BY MR. BROWN:      13 Q. Mr. Hughes, can I ask you to      14 take a look at what was previously marked      15 Hughes-3?      16 A. (Witness complies with      17 request.)      18 MS. HARDING: Exhibit 4 to      19 the Exhibit Book.      20 MR. LEWIS: Exhibit 4 to the      21 Exhibit Book, which is Exhibit-3      22 to the deposition.      23 BY MR. BROWN:      24 Q. Mr. Hughes, Exhibit-3, there</p>	<p>PP Obj: R</p> <p>Page 341</p>

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1 was a question earlier today. It's the  
 2 Trust Distribution Procedures, correct?  
 3 A. Yes.  
 4 Q. And I think you indicated  
 5 that you did not draft this document; do  
 6 I have that correct?  
 7 A. Yes.  
 8 Q. I believe you said the ACC,  
 9 asbestos claimants committee, drafted the  
 10 document; is that correct?  
 11 MR. LIESEMER: Object to the  
 12 form of the question.  
 13 THE WITNESS: That was my  
 14 understanding, yes.  
 15 BY MR. BROWN:  
 16 Q. Okay. And you indicated  
 17 that you had reviewed the document?  
 18 A. Yes, I have.  
 19 Q. And if I remember your  
 20 testimony correctly, you indicated that  
 21 you were given an opportunity to comment  
 22 on the document?  
 23 A. Yes.  
 24 Q. I believe you also stated

CPO

PP  
Obj:  
R;  
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CPO

1 that you didn't recall any comment that  
 2 you had on the document; is that correct?  
 3 A. I didn't recall any specific  
 4 comment. I recall that there were some  
 5 comments I had made.  
 6 Q. Okay. Do you recall what  
 7 those comments were?  
 8 A. Not as I sit here today, no.  
 9 Q. Okay. I think you were also  
 10 asked who else at Grace reviewed the  
 11 document, and I believe your answer was  
 12 your outside counsel did, reviewed it; do  
 13 I have that right?  
 14 A. Yes.  
 15 Q. Other than you and your  
 16 outside counsel, are you aware of anyone  
 17 else that reviewed and drafted the TDP on  
 18 the Grace side?  
 19 A. I don't know if Richard  
 20 Finke or Mark Shelnitz, our general  
 21 counsel, had taken a look at it at that  
 22 time. Perhaps Richard was asked about  
 23 that question when he was deposed. But  
 24 they would be the other logical

PP  
Obj:  
R;  
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1 candidates who may have taken a look at  
 2 it.  
 3 Q. Okay. And the Trust  
 4 Distribution Procedures are the  
 5 procedures pursuant to which asbestos  
 6 personal injury claims are to be handled  
 7 if the Plan is confirmed, correct?  
 8 A. Right, by the Trust.  
 9 MR. BROWN: Okay. All  
 10 right. I am going to pass you to  
 11 Mr. Cohn. Thank you.

12 - - -  
 13 EXAMINATION  
 14 - - -

15 BY MR. JACOB COHN:  
 16 Q. Good afternoon, Mr. Hughes.  
 17 Jacob Cohn for Federal Insurance Company.  
 18 How are you?  
 19 MS. HARDING: Did you all  
 20 join in somebody's 30(b)(6)?  
 21 MR. JACOB COHN: No. I am  
 22 participating as a party in  
 23 interest here.  
 24 MS. HARDING: So just to be

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1 clear, you didn't notice the dep  
 2 and you didn't join anybody else's  
 3 notice?  
 4 MR. JACOB COHN: No. I am  
 5 just a party to the case, and I  
 6 came to the deposition. And I am  
 7 entitled to cross-examine, so I  
 8 am.  
 9 BY MR. JACOB COHN:  
 10 Q. Now, Mr. Hughes --  
 11 MS. HARDING: There are a  
 12 lot of people who want to ask  
 13 questions today. Do you have a  
 14 sense of how long it will take?  
 15 MR. JACOB COHN: I would  
 16 think no more than 15 to 20  
 17 minutes, hopefully less.  
 18 MS. HARDING: All right. I  
 19 think in the interest of not  
 20 having to come back, I will go  
 21 forward, but I --  
 22 MR. JACOB COHN: You are  
 23 burning --  
 24 MS. HARDING: I will State

PP  
Obj:  
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Obj:  
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<p>1 an objection on the record that 2 you didn't notice the deposition. 3 MR. JACOB COHN: I don't 4 understand that to be a bona fide 5 deposition objection.</p> <p>6 MS. DeCRISTOFARO: At one 7 point, there was an email that 8 said in the interest of not having 9 a notice, that not everyone needed 10 to serve separate notices.</p> <p>11 MR. JACOB COHN: Everything 12 is on the record.</p> <p>13 BY MR. JACOB COHN: 14 Q. From 1989 to 2001, you were 15 principally in charge of handling 16 asbestos claims against Grace, correct? 17 A. Asbestos personal injury 18 claims, yes. 19 Q. And from 1989 to 2001 Grace 20 was a for-profit business corporation, 21 correct? 22 A. Yes. 23 Q. So your goal was to minimize 24 the amount of money that Grace had to pay</p>	<p>1 MS. HARDING: Object to form 2 and foundation. 3 MR. JACOB COHN: Whatever. 4 You can answer. 5 THE WITNESS: I assume so, 6 yes. 7 BY MR. JACOB COHN: 8 Q. So that became part of the 9 money that would be available to you, 10 whatever settlement would come in to pay 11 for the resolution of asbestos PI claims, 12 correct? 13 MS. HARDING: Object to 14 form. 15 THE WITNESS: Well, again, I 16 don't -- yeah. I mean, perhaps 17 indirectly. But there was 18 \$300,000 that was settled and 19 \$300,000 was entered -- became 20 Grace's property, and Grace 21 settled cases as part of its 22 business operations. 23 BY MR. JACOB COHN: 24 Q. And Grace would typically</p>
--	--

<p>1 in the defense and settlement and 2 resolution of asbestos PI claims, 3 correct? 4 A. Yes. 5 Q. Now, just looking for a 6 moment at what was marked Hughes-12, 7 which is Exhibit 6 to the Exhibit Book 8 from the Plan, if you would just take a 9 quick look at the Schedule 2. 10 Now, Schedule 2, am I 11 correct, these are insurance companies 12 that had settlement agreements where they 13 paid a lump sum of money to Grace and 14 received a release for policy obligation; 15 would that be correct? 16 A. That's my understanding. 17 Q. Okay. And, for example, 18 Federal Insurance Company, my client, has 19 a settlement for one of its policies, and 20 I will represent to you that they paid 21 \$300,000 in 1997 to settle a \$500,000 22 sub-limit. 23 Now, that \$300,000 was put 24 into Grace's treasury; is that right?</p>	<p>1 have to promise the insurer to use those 2 funds to pay for the resolution of 3 asbestos claims; is that accurate? 4 MS. HARDING: Object to 5 form, in terms of typically. 6 THE WITNESS: Yeah, I guess 7 it's an accounting matter they 8 would apply it to asbestos 9 liabilities. 10 BY MR. JACOB COHN: 11 Q. All right. Now, Schedule 3 12 is listed as schedule Asbestos Insurance 13 Reimbursement Agreements, right? 14 A. Right. 15 Q. Now, those are what would be 16 typically called a coverage in place 17 agreement; would you agree with that 18 terminology? 19 A. Yes. 20 Q. Okay. So as I understand 21 from Grace's Securities and Exchange 22 Commission filings, most of these 23 agreements require the insurer to pay a 24 portion of every claim that Grace settles</p>
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**LPO** 1 that triggers their policy; would that be  
2 right?

3 MS. HARDING: Object to form  
4 and object to asking him questions  
5 about generally insurance  
6 settlement agreements.

7 MR. JACOB COHN: Okay.

8 MS. HARDING: Every  
9 agreement is different.

10 MR. JACOB COHN: That's  
11 fine.

**LPO** 12 BY MR. JACOB COHN:  
13 Q. Can I rely upon Grace's SEC  
14 filings?  
15 A. Yes.  
16 Q. Okay. So can you describe  
17 to me the policies that are identified in  
18 those filings as policies that pay on a  
19 pro rata basis, how the money would be  
20 spent and recouped from those insurers?

21 MS. HARDING: Object to  
22 form.  
23 THE WITNESS: We certainly  
24 had arrangements with insurance

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1 cents on the dollar.  
2 BY MR. JACOB COHN:  
3 Q. Would come back in?  
4 A. Again, it would vary  
5 depending on where we were in terms of  
6 the coverage, yes, we would be  
7 reimbursed. And it varied when, you  
8 know, during the time period. There is a  
9 lot of factors that go into that. And I  
10 don't think you can answer it  
11 definitively, but it certainly would be  
12 in the range I mentioned for some period  
13 of the time.  
14 Q. And Grace believed it could  
15 do a better job of handling the claims by  
16 itself without having the insurers be  
17 involved; is that accurate?

18 MS. HARDING: Object to  
19 form.  
20 THE WITNESS: Whether or not  
21 we thought we could do a better  
22 job or the insurance carriers  
23 would prefer that we did it, the  
24 evolution of it was that Grace

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**LPO** 1 companies that provided that they  
2 would pay us a percentage or a pro  
3 rata portion of the money we spent  
4 that triggered their policy that  
5 we spent on asbestos claims.

6 BY MR. JACOB COHN:  
7 Q. And Grace itself paid a  
8 portion of every dollar that was spent to  
9 resolve an asbestos claim, correct?  
10 A. I think we generally paid it  
11 in the first instance and was reimbursed  
12 under these kinds of agreements, but yes.  
13 Q. And typically how much of  
14 every dollar that you paid out would you  
15 be reimbursed from one of these  
16 agreements?

17 MS. HARDING: Object to  
18 form, foundation.  
19 Go ahead.

20 THE WITNESS: Again, it  
21 would vary, but based on valuation  
22 we do on the 1.7 billion and the  
23 500 million I referred to earlier,  
24 I think 25 cents on the dollar, 30

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1 handled it itself?  
2 BY MR. JACOB COHN:  
3 Q. Okay. And at all times,  
4 while you were there, Grace endeavored to  
5 minimize the amount of money it had paid  
6 to resolve asbestos claims; is that fair  
7 to say?  
8 A. Yes.  
9 Q. Now, in 2005, there was a  
10 conference call between Grace and its  
11 insurers. Were you a participant in that  
12 call?  
13 A. I don't specifically recall,  
14 but I may have been.  
15 Q. Do you remember any  
16 discussion between Grace and its insurers  
17 to the effect that Grace was not ready to  
18 deal with its high level excess insurers?  
19 A. In what sense not ready?  
20 Q. In the sense of, in the  
21 course of the bankruptcy proceedings,  
22 W.R. Grace communicating that sentiment  
23 to its non-settled high level insurers?  
24 A. I don't recall that

PP Obj:  
R;F;  
S

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LPO 1 conversation.

2 Q. You said you were given a  
3 chance to review the TDPs in 2008 -- I am  
4 sorry. Was it 2008?

5 A. Yeah, it would have been  
6 2008.

7 Q. Okay. Now, at that point in  
8 time, Grace's obligations pursuant to the  
9 settlement it reached in April 2008 were  
10 established, correct?

11 MS. HARDING: Object to  
12 form.

13 THE WITNESS: Yes. There  
14 had been a Term Sheet and an  
15 agreement reached.

16 BY MR. JACOB COHN:

17 Q. There was a defined amount  
18 of money and other things that Grace was  
19 going to give to the Trust to settle its  
20 asbestos liabilities; is that right?

21 A. Yes.

22 MS. HARDING: Well, just  
23 object to form.

24 THE WITNESS: Asbestos

GR Obj: R;H;L  
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1 constituencies was the most important  
2 consideration to Grace in reviewing the  
3 TDPs?

4 MR. LIESEMER: Object to the  
5 form.

6 MS. HARDING: Object to the  
7 form.

8 THE WITNESS: I think that  
9 the most important consideration  
10 to Grace in the TDP was that they  
11 were, from a legal standpoint,  
12 sufficiently consistent with, to  
13 the extent they had to be,  
14 consistent with the prior practice  
15 and that they were a reasonable  
16 means of processing and paying  
17 claims so that the Plan would be  
18 confirmed.

19 BY MR. JACOB COHN:

20 Q. So it was important at this  
21 point -- strike that.

22 At this point, Grace had no  
23 additional financial interest in how  
24 asbestos claims were handled; is that

PP Obj:  
R

Page 355

CPO 1 personal injury liabilities.

2 BY MR. JACOB COHN:

3 Q. And is it fair to say that  
4 thereafter, the most significant interest  
5 that Grace had in the TDPs was insuring  
6 that it obtained the 75 percent or  
7 greater vote from the asbestos PI  
8 claimants?

9 MS. HARDING: Object to  
10 form.

11 THE WITNESS: It was  
12 important to Grace that we emerge  
13 from bankruptcy and that the Trust  
14 and so on and the Plan proceed so  
15 that the reorganized company could  
16 emerge from bankruptcy and be free  
17 from its asbestos liabilities.  
18 That was the purpose of the  
19 Chapter 11, and that was obviously  
20 Grace's interest.

21 BY MR. JACOB COHN:

22 Q. So is the answer to my prior  
23 question yes, getting 75 percent super  
24 majority approval by the asbestos

PP Obj:  
R

1 correct?

2 MS. HARDING: Object to the  
3 form.

4 THE WITNESS: Well, that's  
5 not necessarily correct. But we  
6 certainly had -- since our  
7 obligation to fund the Trust,  
8 personal injury Trust, was fixed,  
9 both in terms of the payments that  
10 were to be made at the time of  
11 emergence and the payments off in  
12 the future, then I guess to that  
13 extent, yeah, we had already  
14 established what our liability  
15 was. And our concern was that the  
16 Trust Distribution Procedures were  
17 met whatever legal criteria that  
18 were necessary and that the Plan  
19 be confirmed.

20 BY MR. JACOB COHN:

21 Q. So as of the time that the  
22 settlement was reached, your concern with  
23 the TDPs was that they enable a Plan to  
24 be confirmed in a way that would enable

PP Obj:  
R

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PP Ctr

GR Obj:  
R;H;L

OBS Obj:  
R;H;L

1 Grace to have finality with respect to  
 2 its asbestos obligations and emerge as a  
 3 for-profit corporation again?

4 MS. HARDING: Object to  
 5 form. I think it mischaracterizes  
 6 and doesn't completely accurately  
 7 summarize what he just said  
 8 regarding legal criteria.

9 BY MR. JACOB COHN:

10 Q. Would you agree with what I  
 11 just said?

12 A. No. We operated in  
 13 bankruptcy as a for-profit company. I  
 14 think our goal would be to operate as a  
 15 corporation unencumbered by asbestos  
 16 liabilities.

17 MR. JACOB COHN: No further  
 18 questions. Thanks.

19 - - -  
 20 EXAMINATION

21 - - -  
 22 BY MS. SIMON:

23 Q. Good afternoon. My name is  
 24 Marnie Simon. I represent Fireman's Fund

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CPO

PP  
CR

1 Allianz on page 1 of Schedule 1, the  
 2 Fireman's Fund policies on page 7 of  
 3 Schedule 1, and then the Reunion -  
 4 Adriatica policy on page 16.

5 MS. MAHALEY: I object to  
 6 the form of the question.

7 BY MS. SIMON:

8 Q. Are you aware of any  
 9 agreements with those insurance companies  
 10 to waive their rights under their excess  
 11 policies that was in place with Grace  
 12 pre-petition?

13 A. No, I am not.

14 MS. HARDING: Object to  
 15 form.

16 MS. SIMON: That's all.

17 - - -  
 18 EXAMINATION

19 - - -  
 20 BY MS. McCABE:

21 Q. Good afternoon, Mr. Hughes.  
 22 My name is Eileen McCabe, and I here  
 23 today --  
 24 A. I remember you Eileen.

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PP  
Obj:  
R; F;  
Lo;  
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PP  
Obj:  
R; F;  
Lo;  
S

1 Insurance Company and the Allianz related  
 2 entities.

3 A. Sure.

4 Q. I believe you testified when  
 5 speaking with Michael Brown that  
 6 reviewing the GEICO policies under, I  
 7 think it was, Exhibit-12 here and Exhibit  
 8 6 to the Plan Asbestos Insurance Transfer  
 9 Agreement, I believe you testified there  
 10 that to your knowledge, GEICO had not --  
 11 there were no agreements between Grace  
 12 and GEICO in terms of GEICO ceding or  
 13 waiving its rights under those excess  
 14 policies; is that correct?

15 A. Yes.

16 Q. And would you answer --

17 A. That I was aware of.

18 Q. That you were aware of.

19 And would your answer be the  
 20 same for the Fireman's Fund and Allianz  
 21 companies?

22 A. You are talking with respect  
 23 to the excess insurance policies?

24 Q. The excess policies of

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CPO

PP  
Obj:  
R;  
F;  
Lo;  
S

1 Q. I am here today on behalf of  
 2 AXA Belgium as a successor to Royale  
 3 Belge.

4 And just to make this go  
 5 quickly, if I could follow up with the  
 6 same questions that were just asked to  
 7 you with regard to the Royale Belge  
 8 policies that appear on page 16 of what's  
 9 been designated Hughes Exhibit-12. There  
 10 are three policies that are identified  
 11 there for excess policies.

12 Are you aware of any  
 13 agreement that Royale Belge had  
 14 pre-petition pursuant to Royale Belge  
 15 ceded or waived any of its excess  
 16 policies as listed on that policy?

17 MS. HARDING: Object to  
 18 form.

19 THE WITNESS: No, I am not.  
 20 MS. McCABE: That's it.

21 - - -  
 22 EXAMINATION

23 - - -  
 24 BY MR. SCHIAVONI:

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PP  
Obj:  
R; F;

PP  
Obj:  
R; F;  
Lo;  
S

PP  
Obj:  
R; F;  
Lo;  
S

Arrived

1 Q. Mr. Hughes, hi. I am Tank  
 2 Schiavoni from O'Melveny for Arrowwood.  
 3 Mr. Hughes, you were asked  
 4 some questions about BNSF. Do you recall  
 5 that generally?

6 A. Yes.

7 Q. BNSF was asking about or  
 8 their counsel was asking about whether  
 9 claims against them were broadly covered  
 10 in the policy issues to Grace.

11 Do you remember that line of  
 12 questioning, just the line of questioning  
 13 generally?

14 A. Yes.

15 Q. In February of 2006, did  
 16 Royal give notice to you and to Grace  
 17 that BNSF was seeking coverage from Royal  
 18 under Grace's Zonolite policies for  
 19 claims against BNSF by Libby claimants?

20 A. I recall discussions at that  
 21 period of time between Grace and Royal  
 22 concerning BNSF claims, yes.

23 MR. SCHIAVONI: 13 is next.  
 24 (Hughes-13 marked for

1 late as March, right?  
 2 A. Uh-huh.  
 3 Q. And did you receive a copy  
 4 of Exhibit-13 in the ordinary course of  
 5 your business?  
 6 A. Yes.  
 7 Q. Okay. And having reviewed  
 8 Exhibit-13, does it refresh your memory  
 9 that Royal gave you notice in February of  
 10 2006 that BNSF was seeking coverage from  
 11 Royal under Grace's Zonolite policies for  
 12 claims asserted against BNSF by the Libby  
 13 claimants?

14 A. Yes.

15 Q. Did Royal provide Grace with  
 16 a copy of the January 31 letter from BNSF  
 17 to Royal demanding coverage under Grace's  
 18 Zonolite policies?

19 A. Yes.

20 Q. Am I correct that Royal  
 21 advised Grace in February of 2006 that  
 22 Royal had declined to accept the tender  
 23 of claims by BNSF under Grace's Zonolite  
 24 policies?

1 identification at this time.)

2 BY MR. SCHIAVONI:

3 Q. Would you take a minute to  
 4 read Exhibit-13. And then my question,  
 5 Mr. Hughes, is whether you have seen  
 6 Exhibit-13 before.

7 A. I do recall seeing this,  
 8 yes.

9 Q. And can you tell us what  
 10 Exhibit-13 is?

11 A. It's a letter from Carl  
 12 Pernicone to me dated February 24th,  
 13 2006, and he is writing on behalf of  
 14 Royal, advising Grace that BNSF Railway  
 15 is seeking coverage from Royal under the  
 16 Zonolite policies for the Libby claims.

17 Q. Okay. And did you receive a  
 18 copy of Exhibit-13 on or about February  
 19 24, 2006?

20 A. I believe so.

21 Q. And --

22 A. Although it looks like the  
 23 stamp is March, but...

24 Q. You may have received it as

1 A. Yes.  
 2 Q. Am I also correct that in  
 3 February of 2006, Royal advised Grace  
 4 that it was referring to Grace the BNSF  
 5 claims that were being made under the  
 6 Grace Zonolite policies?

7 A. Repeat that question.

8 MS. HARDING: Object to  
 9 form.

10 MR. SCHIAVONI: Why don't we have it read again.

11 (The reporter read from the  
 12 record as requested.)

13 THE WITNESS: Yes.

14 BY MR. SCHIAVONI:

15 Q. Is one of the things that  
 16 Royal did in February of 2006 was invoke  
 17 the indemnity of the 1995 settlement  
 18 agreement that it had with Grace?

19 A. Yes, it did.

20 Q. Am I correct in May of 2006,  
 21 Grace joined Royal in jointly responding  
 22 to BNSF's request for coverage under the  
 23 Grace's Zonolite policies?

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Page 368

1 A. Yes.  
 2 Q. And am I correct,  
 3 Mr. Hughes, that Grace advised BNSF in  
 4 May of 2006 that Royal had fully  
 5 discharged and satisfied any obligation  
 6 it may have owed to Grace for  
 7 asbestos-related claims under the  
 8 Zonolite policies?

9 MS. HARDING: Object to  
 10 form.

11 But go ahead.

12 THE WITNESS: Yeah, my  
 13 recollection was that that was the  
 14 general message in the letter.

15 BY MR. SCHIAVONI:

16 Q. Is it also true, Mr. Hughes,  
 17 that Grace told Royal -- and this is in  
 18 May of 2006 -- that Royal had fully  
 19 discharged and satisfied any obligations  
 20 it may have owed to Grace for  
 21 asbestos-related claims under the  
 22 Zonolite policies?

23 A. We may have told them that,  
 24 but the agreement itself had -- I think

Arrowwood

1 appear on the bottom?  
 2 A. Somebody signed it on my  
 3 behalf. Anybody who knows my writing  
 4 knows that's definitely not my writing.

5 Q. Did you authorize had person  
 6 to sign on your behalf?

7 A. Yes.

8 Q. And were you authorized to  
 9 enter into this letter on behalf of  
 10 Grace?

11 A. Yes, I was.

12 Q. And your entry into this  
 13 letter or author -- was your  
 14 authorization of this letter part of the  
 15 ordinary course of your duties at Grace?

16 A. Yes.

17 Q. Were the statements that are  
 18 made in Exhibit-14 true and correct when  
 19 they were made?

20 A. I believe so, yes.

21 Q. Prior to issuing the May 5th  
 22 letter that's marked as Exhibit-14, did  
 23 you review the 1995 Grace/Royal  
 24 settlement?

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1 the answer to your question is yes.

2 MR. SCHIAVONI: Okay. I am  
 3 going to hand you a copy, and we  
 4 will mark this as Exhibit-14.

5 (Hughes-14 marked for  
 6 identification at this time.)

7 BY MR. SCHIAVONI:

8 Q. Have you seen a copy of  
 9 Exhibit-14 before, Mr. Hughes?

10 A. Yes, I have.

11 Q. And can you tell us what it  
 12 is generally?

13 A. It's a letter on Wilson  
 14 Elser letterhead that was sent by Royal  
 15 and Grace to attorneys for BNSF Railway  
 16 in Montana indicating that we had -- that  
 17 Royal had discharged its obligations  
 18 under the policies and that if they  
 19 intended to proceed against Grace, that  
 20 we would have to take action in the  
 21 bankruptcy court.

22 Q. Mr. Hughes, on the second  
 23 page of this letter, the page that's  
 24 marked GCO 000200, does your signature

Arrowwood

1 A. Yes, I did.  
 2 Q. And prior to issuing the May  
 3 5, 2006 letter that's marked as  
 4 Exhibit-14, did you have occasion to  
 5 speak to anybody at Grace who was  
 6 involved in the 1995 Grace/Royal  
 7 settlement?

8 A. Yes.

9 Q. And did you speak to  
 10 Mr. Posner?

11 A. Yes, I did.

12 Q. Did you speak to anyone  
 13 else?

14 A. I think that Mr. Finke and  
 15 Grace counsel were also involved in this  
 16 letter.

17 Q. And am I correct that in May  
 18 of 2006, one of the other things you did  
 19 was that you advised BNSF that Grace had  
 20 fully and finally released Royal from any  
 21 further liability for asbestos-related  
 22 claims under the Grace/Zonolite policies?

23 MR. LEWIS: Objection,  
 24 leading.

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*Arrowood**Arrowood*

1 MR. SCHIAVONI: All right.  
 2 I will rephrase the question.  
 3 BY MR. SCHIAVONI:  
 4 Q. Did you --  
 5 MR. JACOB COHN: This is  
 6 cross.  
 7 MR. LEWIS: It's not cross.  
 8 These guys are in perfect symphony  
 9 here.  
 10 BY MR. SCHIAVONI:  
 11 Q. In May of 2006, Mr. Hughes,  
 12 did you advise BNSF on behalf of Grace  
 13 that Grace had fully and finally released  
 14 Royal from any further liability for  
 15 asbestos-related claims under the  
 16 Grace/Zonolite policies?  
 17 MR. LEWIS: Same objection,  
 18 leading.  
 19 THE WITNESS: This letter  
 20 says that.  
 21 BY MR. SCHIAVONI:  
 22 Q. And that's a statement you  
 23 authorized to be made to BNSF, right?  
 24 MR. LEWIS: Same objection,

1 Q. Let's look together.  
 2 A. "There is no basis for BNSF  
 3 to pursue coverage from Royal for  
 4 asbestos related claims under the  
 5 Zonolite policies," is the final sentence  
 6 of the first paragraph on page 2. But  
 7 that's not how I understood your  
 8 question.  
 9 Q. Let me see if I can ask it  
 10 again. Okay.  
 11 In May of 2006, did you  
 12 advise BNSF that there was no basis for  
 13 BNSF to pursue coverage from Royal for  
 14 asbestos-related claims under the  
 15 Zonolite policies?  
 16 A. Yes.  
 17 MR. LEWIS: Objection,  
 18 leading. Let the record reflect  
 19 that the witness answered before I  
 20 had an opportunity to state my  
 21 objection.  
 22 BY MR. SCHIAVONI:  
 23 Q. And was that a true and  
 24 correct statement when it was made?

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*Arrowood**Arrowood*

1 leading.  
 2 THE WITNESS: Yes. Grace  
 3 authorized, yes.  
 4 BY MR. SCHIAVONI:  
 5 Q. And, Mr. Hughes, did you  
 6 believe that statement to be a true and  
 7 correct statement at the time it was  
 8 made?  
 9 MR. LEWIS: Objection, asked  
 10 and answered.  
 11 THE WITNESS: Yes.  
 12 BY MR. SCHIAVONI:  
 13 Q. And is one of the other --  
 14 strike that.  
 15 Mr. Hughes, did you also  
 16 advise BNSF in May of 2006 that there was  
 17 no basis for BNSF to pursue coverage from  
 18 Royal for asbestos-related claims under  
 19 the Grace/Zonolite policies?  
 20 MR. LEWIS: Objection,  
 21 leading.  
 22 THE WITNESS: Where does it  
 23 say that in this letter?  
 24 BY MR. SCHIAVONI:

1 MR. LEWIS: Objection, asked  
 2 and answered.  
 3 THE WITNESS: Yes.  
 4 BY MR. SCHIAVONI:  
 5 Q. You were asked some  
 6 questions by Libby's counsel about your  
 7 knowledge of the exposure that the manner  
 8 in which folks were exposed in Libby.  
 9 Do you recall generally  
 10 those questions?  
 11 A. Yes.  
 12 Q. Do you have any personal  
 13 knowledge based on your own observations  
 14 of how anybody in Libby was, in fact,  
 15 exposed to asbestos?  
 16 MR. LEWIS: Objection. That  
 17 question is loaded up and leading.  
 18 MS. HARDING: I will object  
 19 to form as well.  
 20 Go ahead.  
 21 THE WITNESS: I never was  
 22 personally present at the Libby  
 23 mine and mill and the Libby  
 24 operation, but there is a

1 substantial amount of documentary  
 2 evidence and scientific evidence,  
 3 industrial hygiene records and so  
 4 on concerning the exposure levels  
 5 of employees at the mine and mill.  
 6 And my earlier testimony was based  
 7 on my familiarity generally with  
 8 that information.

9 BY MR. SCHIAVONI:

10 Q. Okay. So you were relying  
 11 on general documentation about things  
 12 that occurred in Libby; is that right?

13 MS. HARDING: Object to form  
 14 as to things that occurred in  
 15 Libby.

16 But go ahead.

17 THE WITNESS: I was relying  
 18 on air sampling data that had been  
 19 collected by the company, by the  
 20 State of Montana, by the United  
 21 States Federal Government, by  
 22 insurance carriers providing  
 23 coverage to Grace, I believe as  
 24 well on air sampling and personal

1 concentrate. So to that extent,  
 2 no.

3 But, again, there is a body  
 4 of data out there that I am very  
 5 familiar with that was created by  
 6 various individuals, trained  
 7 industrial hygienists, measuring  
 8 the exposures associated with the  
 9 Libby work, and that's what was  
 10 the basis for what my earlier  
 11 testimony.

12 BY MR. SCHIAVONI:

13 Q. Is it true that some of the  
 14 people in Libby that have brought claims  
 15 against Grace also asserted that they  
 16 were exposed to asbestos from non-Grace  
 17 sources?

18 A. Yes.

19 Q. Okay. And the lumber yard  
 20 out there is one such source, right?

21 A. Yes.

22 Q. And is it also true that  
 23 some of the people in Libby have  
 24 identified other sources of asbestos that

1 air sampling that was for  
 2 employees involved in the mine and  
 3 milling of vermiculite. So I  
 4 think that's a significant body of  
 5 data out there, and that's what I  
 6 was relying on.

7 BY MR. SCHIAVONI:

8 Q. Would it be fair to say that  
 9 you can't offer any testimony about how  
 10 any individual Libby claimant was, in  
 11 fact, exposed to asbestos based on any  
 12 personal knowledge that you might have  
 13 with regard to that Libby claimant?

14 MS. HARDING: Objection.

15 MR. LEWIS: Objection,  
 16 leading.

17 MS. HARDING: Objection to  
 18 form and to the broad  
 19 characterization of Libby  
 20 claimant.

21 THE WITNESS: Again, I was  
 22 never present in Libby during the  
 23 manufacture and mining and milling  
 24 of vermiculite and vermiculite

1 are unrelated to Grace besides the lumber  
 2 yard?

3 A. Yes.

4 Q. You were shown a copy of  
 5 Exhibit Hughes-1. Let me hand you what  
 6 was previously marked as Exhibit-1.

7 Did you prepare Exhibit-1?

8 A. No.

9 Q. Was Exhibit-1 prepared under  
 10 your supervision?

11 A. No. I think I testified to  
 12 this earlier that I was involved in the  
 13 collection of the data a lot of which is  
 14 reported in the report. But Mr. Port  
 15 didn't directly report to me, and I  
 16 didn't draft the report itself or the  
 17 attached tables.

18 Q. So some of the data in  
 19 Exhibit-1 may have been collected by you,  
 20 but you didn't prepare the exhibit and  
 21 you didn't supervise its preparation; is  
 22 that right?

23 A. No.

24 MS. HARDING: His question

*Arrowwood*

1 was correct, that you didn't -- it  
2 was one of those backwards things.

THE WITNESS: Sorry.

BY MR. SCHIAVONI:

Q. Some of your data may be in  
Exhibit-1, but you didn't prepare  
Exhibit-1 and you didn't supervise the  
preparation of Exhibit-1; is that right?

A. I did not prepare Exhibit-1,  
nor did I supervise the preparation of  
Exhibit-1.

Q. The 1995 Grace/Royal  
settlement covered policies issued to the  
Zonolite Company; is that generally  
right?

A. Yes.

Q. Okay. Are you aware whether  
Royal's also alleged to have issued,  
entirely separate from that, a high level  
excess policy in the 1980s to Grace?

A. I learned that in connection  
with the bankruptcy. I am not sure I  
knew that beforehand.

Q. Okay. But sitting here

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*CPO*

1 Arrowwood ceded or in any way waived or  
2 given up any of its rights to associate  
3 in the defense or cooperate or any other  
4 rights under its high level excess  
5 policy?

A. Not that I am aware of.

MS. HARDING: Object the  
form with respect to rights.

BY MR. SCHIAVONI:

Q. And am I correct that prior  
to the bankruptcy filing, Grace hadn't  
tendered any claims to Royal under that  
high level excess policy?

A. I don't know the extent to  
which we were tendered claims  
pre-petition to high level excess  
policies. Generally, the notice of the  
claims was done by our insurance broker.

Q. Okay. So you don't know one  
way or the other?

A. I don't.

MR. SCHIAVONI: That's all I  
have. Thank you, Mr. Hughes.

- - -

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*PP  
Obj:  
R;  
Lo;  
S*
*PP  
Obj:  
R;  
S*
*CPO*

1 Q. The 1995 Grace/Royal  
settlement covered policies issued to the  
Zonolite Company; is that generally  
right?

A. Yes.

Q. Okay. Are you aware whether  
Royal's also alleged to have issued,  
entirely separate from that, a high level  
excess policy in the 1980s to Grace?

A. I learned that in connection  
with the bankruptcy. I am not sure I  
knew that beforehand.

Q. Okay. But sitting here

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*CPO**PP  
Obj:  
R*

1 today, you are familiar with the fact  
2 that there is a separate high level  
3 excess policy that Royal has issued in  
4 '80s to Grace; is that right?

A. I believe so, yes.

Q. And Mr. Brown asked you some  
questions about whether or not rights to  
associate in the defense and to  
cooperated had been ceded by his clients  
to Grace.

Do you remember those  
questions generally?

MS. HARDING: Object to  
form.

But go ahead.

MR. SCHIAVONI: All right.

THE WITNESS: There are  
questions about it. I think the  
question was whether we had waived  
or all agreed, and the answer was  
no, I wasn't aware of any such  
agreement.

BY MR. SCHIAVONI:

Q. Has either Royal or

#### EXAMINATION

- - -

BY MR. IFFT:

Q. Good afternoon, Mr. Hughes.

A. Good afternoon.

Q. My name is Richard Ifft. I  
represent Maryland Casualty Company and  
two Zurich entities, Zurich Insurance  
Company and Zurich Insurance Bermuda  
Company.

A. Okay.

Q. I am not, I think, going to  
ask many questions about Maryland  
Casualty today.

With respect to Zurich, I  
will represent to you that the two Zurich  
entities issued a number of high level  
excess policies, and I will direct your  
attention to what we have marked as  
Exhibit-12, the Exhibit 6 to the Exhibit  
Book for the Plan.

Directing your attention to  
Schedule 1, page 20, you will see there  
is about 11 or so participations on that

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*PP  
Obj:  
R;  
BE*
*Arrowwood*
*PP  
Obj:  
R;  
Lo;  
S*

**CPO**

1 last page.  
 2 A. Yes.  
 3 Q. If I were to ask you the  
 4 same questions that other carriers have  
 5 asked you, if you are aware of any  
 6 waivers by any of the Zurich entities of  
 7 their rights under the policy, are you  
 8 aware of that with respect to those  
 9 policies?

10 A. No, I am not.

11 MS. HARDING: Object to  
 12 form --

13 MR. LIESEMER: Object to  
 14 form.

15 MS. HARDING: -- as to  
 16 rights.

17 BY MR. IFFT:

18 Q. You are aware, Mr. Hughes,  
 19 that the excess insurers under their  
 20 policies typically have certain rights  
 21 with respect to their ability to be  
 22 involved with respect to the handling of  
 23 the claims against Grace?

24 A. Yes.

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**CPO**

PP  
 Obj:  
 R; F;  
 LO;  
 S

1 A. No, I am not.  
 2 Q. I think you testified that  
 3 you had some familiarity with Asbestos  
 4 Insurance Reimbursement Agreements  
 5 generally, correct?

6 A. Yes.

7 Q. And what's your  
 8 understanding as to how those typically  
 9 work?

10 A. They typically would work  
 11 that as the costs were incurred under --  
 12 we would agree in terms of how it was  
 13 allocated, but Grace had a model in terms  
 14 of how the terms were allocated on  
 15 different policies. And to the extent  
 16 the policy was triggered that the party,  
 17 in this case Zurich International, would  
 18 pay Grace or reimburse Grace for some  
 19 portion of the costs that were incurred  
 20 for those claims.

21 Q. Pursuant to a defined  
 22 percentage in the agreement?

23 A. Defined percentage,  
 24 generally, yes.

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PP  
 Obj:  
 R;  
 BE;  
 LO

**CPO**

18 Q. You are aware, Mr. Hughes,  
 19 that the excess insurers under their  
 20 policies typically have certain rights  
 21 with respect to their ability to be  
 22 involved with respect to the handling of  
 23 the claims against Grace?

24 A. Yes.

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**CPO**

PP  
 Ctr  
 Obj:  
 BE;  
 R

1 Q. Do those agreements also  
 2 typically have any provisions that on  
 3 their face alter the rights that  
 4 otherwise might exist under the policy  
 5 with respect to the insurer's involvement  
 6 in the claims?

7 MS. HARDING: Object to  
 8 form.

9 MR. LIESEMER: Join.

10 THE WITNESS: I think that  
 11 would vary. My understanding  
 12 would be generally no, but I think  
 13 that it certainly -- I would have  
 14 to look at the individual  
 15 agreement to comfortably say that.

16 BY MR. IFFT:

17 Q. Okay. You are not sure,  
 18 sitting here today?

19 A. I am not sure, but you are  
 20 also asking me specifically about  
 21 agreements. And your other questions  
 22 were generally in the absence, but here  
 23 there were agreements. And I have to  
 24 look at the individual agreements before

Page 385

PP  
 Obj:  
 R; BE;  
 LO; F

**CPO**

1 MR. LIESEMER: Object to the  
 2 form.

3 BY MR. IFFT:

4 Q. And is it your testimony  
 5 that you are not aware of any waiver of  
 6 any such rights by the Zurich companies  
 7 with respect to their policies?

8 MS. HARDING: Object to form  
 9 again.

10 But go ahead.

11 MR. IFFT: You can answer.

12 THE WITNESS: I am not aware  
 13 of any.

14 BY MR. IFFT:

15 Q. Let me direct your attention  
 16 to Schedule 3. I will represent to  
 17 you that this is the Schedule of Asbestos  
 18 Insurance Reimbursement Agreements, and  
 19 you will see at the bottom there is one  
 20 agreement with Zurich International with  
 21 respect to, I will represent to you, one  
 22 of those 11 policies.

23 Do you happen to be familiar  
 24 with that agreement, sitting here today?

PP  
 Obj:  
 R; F;  
 S

PP  
 Obj:  
 R; S;  
 F